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No. 80-2084

IN THE

Supreme Court of the United States

October Term, 1980

JANE R. LONG, SUSAN JONE LONG, SANDRA RENEE LONG, a minor, and WILLIAM ELDON LONG, II, a minor, by JANE R. LONG, their Guardian ad Litem,

Petitioners,

vs.

CHEMEHUEVI INDIAN RESERVATION, CHEMEHUEVI INDIAN TRIBE, CHEMEHUEVI INDIAN RESERVATION AND CHEMEHUEVI INDIAN TRIBE, doing business as HAVASU LANDING RESORT MARINA,

Respondents.

Response to Petition for Writ of Certiorari to the Court of Appeal, Fourth District, Second Division of the State of California.

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Introduction and Statement of Case.

This case presents the question of whether the courts of the State of California may assert jurisdiction over a sovereign Indian nation.

Appellants contend that this question of Federal law has not been settled by this Court. In fact, this Court has repeatedly upheld the sovereign immunity of the Indian tribes; since the opinion of the California Court of Appeal is in

conformity with the decisions of this Court, no Federal question is presented. Therefore, the petition for writ of certiorari should be denied.

Questions Presented by Appellants.

1. Where the Congress — the body vested with sole authority to regulate the sovereign Indian tribes — has declined to grant to the States the power to assert jurisdiction over the tribes, may California courts nonetheless assert such jurisdiction?

2. Has the Chemehuevi Indian Tribe waived its sovereign immunity by doing business in the tribal form?

3. Does the failure of the Congress to delegate its jurisdiction over sovereign Indian tribes make an impermissible classification, thus violating the due process clause of the Fifth Amendment?[1]

As the California Court of Appeal correctly answered each of these questions in the negative, its holding does not conflict with any ruling by this Court, and therefore the petition for writ of certiorari should be denied.

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[1]Appellants' equal protection argument is based on the Fifth Amendment due process clause and the Fourteenth Amendment. (Petition for Writ, pp. 21-22.) The Fifth Amendment makes applicable to action by the Federal government the guarantees of equal protection found in the Fourteenth Amendment. The equal protection analysis under the Fifth and Fourteenth Amendments is the same. See, generally, *Bolling v. Sharpe*, 347 U.S. 497, 499, n.11 (1954); *Weinberger v. Weisenfeld*, 420 U.S. 636, 638, n.2 (1975); *Buckley v. Valeo*, 424 U.S. 1, 93 (1975).

ARGUMENT.

The Indian tribes have historically been considered and recognized as political entities distinct from the State in which their members resided. Reflecting these unique circumstances, relations between the Federal government (including the States) and the tribes were expressly assigned to Congress.

> "Congress shall have Power
>
> * * *
>
> "To regulate commerce . . . with the Indian tribes." United States Constitution, Art. I, Sec. 8, cl. 3.

Congress has exclusive jurisdiction over the Indian tribes and the tribes are exempt from suit without express Congressional authorization.

I.

The Chemehuevi Indian Tribe, as a Distinct and Independent Political Entity, Is Immune From Suit.

Echoing this unique history, from the earliest years of the Republic, the courts have recognized the Indian tribes as distinct, independent political communities. For example, in the landmark case of *Worcester v. State of Georgia*, 6 Pet. 515, 31 U.S. 515 (1833), Chief Justice Marshall, writing for the majority, acknowledged the sovereignty of the Indian tribes, holding that a State could not extend its criminal jurisdiction to Indian reservation land because of the doctrine of sovereign immunity. He observed that the Indian nations were, and had always been considered as:

> ". . . [D]istinct political communities, having territorial boundaries, within which their authority is exclusive, and having the right to all the land within those boundaries, which is not only acknowledged, but guaranteed by the United States." 6 Pet. at 557.

This distinct and independent status extends to private lawsuits. Whether — as sometimes — the concept is framed in terms of jurisdiction or whether — as at other times — it is framed in terms of sovereign immunity, the result is clear: State courts may not entertain actions against Indian tribes.

The Indian tribes were and are qualified to exercise powers of self-government, not by virtue of any delegation of powers from the Federal government, but rather by reason of their original tribal sovereignty. Thus, the Indian tribes possess all the inherent rights of sovereignty except where restrictions have been placed on that sovereignty by the United States, acting through Congress.[2] One example of the application of this principle by this Court is found in *United States v. United States Fidelity and Guaranty Co.*, 309 U.S. 506 (1940), where this Court voided a judgment against two Indian tribes. The U.S. brought an action in Federal court on behalf of the tribes to recover coal lease royalties; defendant was the lessee's surety. In an earlier bankruptcy proceeding, the lessee had obtained a judgment for $9,060.90 on a cross-claim against the same tribes. In the *Fidelity* case, the lessee's surety pled the earlier judgment as a bar to recovery in the action for royalties. This Court held that the earlier judgment against the tribes was

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[2]This immunity is well-established. See, generally, *Ortiz-Berraza v. United States*, 512 F.2d 1176, 1179 (9th Cir. 1975) ["Indian tribes possess an inherent sovereignty except where it has been specifically taken from them by treaty or act of Congress."]; *Lomay Aktewa v. Hathaway*, 520 F.2d 1324, 1326 (9th Cir. 1975) ["[T]he Hopi Tribe, as a dependent, political, quasi-sovereign nation, enjoys sovereign immunity and cannot be sued without its consent or the consent of the Congress."].

void,[3] as the tribes were immune from suit without Congressional authorization. Justice Reed, writing for a unanimous court,[4] stated:

> "These Indian Nations are exempt from suit without Congressional authorization . . . [T]he suability of . . . the Indian Nations, whether directly or by cross-action, depends upon affirmative statutory authority. Consent alone gives jurisdiction to adjudge against a sovereign. Absent that consent, the attempted exercise of judicial power is void." 309 U.S. at 512, 514.

Thus, *United States v. United States Fidelity and Guaranty Co.* reaffirms the proposition that tribal sovereign immunity bars suit.

Appellants rely on the recent case of *Montana v. United States*, ... U.S. ...., 101 S.Ct. 1245 (1981) for support of their contention that sovereign immunity does not apply. A close examination of *Montana* reveals that it does not conflict with the contention of the Tribe that it possesses sovereign immunity. *Montana* involved the question of whether the Crow Indian Tribe had the power to regulate non-Indian fishing and hunting on reservation land owned in fee by non-members of the Tribe. The Tribe argued that it could regulate non-Indian fishing and hunting simply be-

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[3]The lessee had obtained the earlier judgment on a cross-claim, its total claim for $11,060.90 having been offset by the tribes' claim for $2,000.00 for a net judgment of $9,060.90. It was conceded that the earlier judgment was valid insofar as it satisfied the tribes' claim against the lessee on the theory that a defendant may, without statutory authority, recoup on a counter-claim an amount equal to the principal claim. See, generally, *Bull v. United States*, 295 U.S. 247, 261; *National City Bank v. Republic of China*, 348 U.S. 356, 364 (1954) ["It is recognized that a counterclaim based on the subject matter of a sovereign's suit is allowed to cut into the doctrine of immunity."]. This limited exception to the doctrine of sovereign immunity is not applicable here, as the Chemehuevi Indian Tribe has not made any claim against Appellants.

[4]Justice McReynolds did not participate in the decision.

cause the land on which it was taking place was contained within the reservation although owned in fee by non-Indians. This Court recognized that Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian land. This Court stated:

> "A tribe may regulate, through taxation, licensing, or other means, the activities of non-members who enter consenual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. . . . A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.
>
> "No such circumstances, however, are involved in this case. Non-Indian hunters and fishermen on non-Indian fee land do not enter any agreements or dealings with the Crow Tribe so as to subject themselves to tribal civil jurisdiction. And nothing in this case suggests that such non-Indian hunting and fishing so threatens the Tribe's political or economic security as to justify tribal regulation . . . Montana's statutory and regulatory scheme does not prevent the Crow Tribe from limiting or forbidding non-Indian hunting and fishing on lands still owned by or held in trust for the Tribe or its members." 101 S.Ct. at 1258-1259 [citations omitted.].

Unlike *Montana*, the Longs' suit has a direct effect on the economic security of the Chemehuevi Indian Tribe. If the doctrine of sovereign immunity is abrogated, the Tribe would be required to incur further costs in employing attorneys to defend it. Further, should the Longs succeed, the Tribe would be faced with the burden of satisfying a judg-

ment. *Montana* is not applicable to the facts at hand because it involves the regulation of non-Indians on non-Indian land. This case involves tribal relationships with non-Indians on Indian land, and also involves a possible threat to the security and welfare of the Tribe. The Chemehuevi Indian Tribe possesses sovereign immunity, and the petition for writ of certiorari should be denied.

II.

Although Congress Has Granted California Limited Jurisdiction Over Individual Indians, It Has Not Waived the Sovereign Immunity of the Indian Tribes.

Appellants argue that the sovereign immunity of the Chemehuevi Indian Tribe has been waived as a matter of law by virtue of 25 U.S.C. 1302[5] (the Indian Bill of Rights) (Petition for Writ, p. 13) and 28 U.S.C. 1360 (Petition for Writ, p. 13). These arguments are without merit. The Indian Civil Rights Act is not applicable since Appellants do not attempt to state a claim under the Act. 28 U.S.C. 1360 does not confer upon the States jurisdiction over the tribes them-

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[5]In support of their argument that the Tribe's sovereign immunity is waived by the Indian Civil Rights Act, Appellants rely on *Loncassion v. Leekity*, 334 F.Supp. 370 (D.N.Mex. 1971), *Williams v. Sisseton-Wahpeton Sioux Tribal Counsel*, 387 F.Supp. 1194 (D.S.Dakota 1975) and *Dry Creek Lodge, Inc. v. United States*, 515 F.2d 926 (10th Cir. 1975). However, in these cases, the court specifically held that the Indian Civil Rights Act impliedly waived tribal sovereign immunity because if it did not, the Act's provisions could not be put into effect. The Indian Civil Rights Act is not involved in the case at hand.

selves; it only confers upon the State courts jurisdiction over private suits to which individual Indians are parties.[6]

The history of 28 U.S.C. 1360 was discussed at length in *State of Washington v. Confederated Bands and Tribes of the Yakima Indian Nation*, 439 U.S. 463 (1979).[7] Justice Stewart, writing for the majority, set forth the purpose of Public Law 28 (codified as 28 U.S.C. 1360) and the reasons that it transferred certain jurisdiction to certain of the States.

> "Pub[lic] L[aw] 280 . . . was enacted by Congress in 1953 in part to deal with the 'problem of lawlessness on certain Indian reservations, and the absence of adequate tribal institutions for law enforcement'." 439 U.S. at 471, quoting *Bryan v. Itasca County*, 426 U.S. 373, 379 (1976).

This section was enacted pursuant to a statutory scheme by Congress to selectively transfer jurisdiction in certain criminal and civil matters involving Indians to the states.

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[6]28 U.S.C. 1360 provides in relevant part:

> "(a) Each of the States or Territories listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over other civil causes of action, and those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory . . ."

For California, the table lists "all Indian country within the State."

[7]In *State of Washington*, the State had enacted a law to enable it to take over jurisdiction of the Yakima Tribe pursuant to 28 U.S.C. 1360. The State took over jurisdiction of some Indian lands but not all, resulting in a partial assumption of jurisdiction. The Tribe contended that such partial assumption violated equal protection principles. The court found that there was no equal protection violation and upheld the partial assumption.

> "It is settled that 'the unique legal status of Indian tribes under federal law' permits the Federal Government to enact legislation singling out tribal Indians, legislation that might otherwise be constitutionally offensive." 439 U.S. at 500-501.

As originally enacted, it provided for a blanket transfer of jurisdiction in five states, of which California was one; Alaska was added in 1958. A companion measure, 25 U.S.C. 1322, which was involved in *State of Washington, supra*, allows states to assume jurisdiction if they wish: in 1968 this section was modified to require tribal consent to any assumption of jurisdiction.

Appellants argue that this transfer of jurisdiction waives the Tribe's sovereign immunity. (Petition for Writ, p. 9.) In fact, this Court has held that Section 1360 does not constitute a waiver of tribal sovereign immunity.

In *Bryan v. Itasca County, Minnesota*, 426 U.S. 373 (1976), involving the attempt of a state to tax property on Indian land, this Court reviewed the language of the statute and the legislative history. It concluded that Section 1360 applied only to private litigation to which the tribe itself was not a party. This Court found no waiver of sovereign immunity.

> "[T]here is notably absent [from 28 U.S.C. 1360] any conferral of State jurisdiction over the tribes themselves . . ." 426 U.S. at 389.[8]

This Court reviewed and analyzed the language of Section 1360 to set its limits and stated:

> ". . . [T]he consistent and exclusive use of the terms 'civil causes of action', 'aris[ing] on', 'civil laws . . ., not of general application to private persons or private property', and 'adjudicat[ion]', in both the Act and its legislative history virtually compels our con-

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[8]In fact, subdivision (b) of 28 U.S.C. 1360 recognizes certain protections for both the "Indian" and the "Indian tribe." Since only Indians are recognized in subsection (a), clearly the omission of any reference to the Indian tribes in (a) was intentional. In fact, this is one of the bases for the opinion of the California Court of Appeal. See Court of Appeal Opinion, p. 6, n. 5.

clusion that the primary intent of Section 4 [28 U.S.C. 1360] was to grant jurisdiction over private civil litigation involving reservation Indians in State court." 426 U.S. at 385.

* * *

"[28 U.S.C. 1360] seems to have been primarily intended to redress the lack of adequate Indian forums for resolving private legal disputes *between reservation Indians*, and *between Indians and other private citizens*, by permitting the courts of the States to decide such disputes . . ." 426 U.S. at 383 (emphasis added).

This Court held that Section 1360 did not confer upon the States the power to tax property on Indian land, nor did it constitute a waiver of tribal sovereign immunity.[9]

This holding is significant in that it demonstrates that this Court has recognized and established that Section 1360 is not a statute of general application, but rather confers ju-

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[9]Compare *Fort Mojave Tribe v. San Bernardino County*, 543 F.2d 1253 (9th Cir. 1976), in which the court held that the State of California could levy a possessory interest tax on non-Indian lessees of reservation land. The court recognized that California had *limited* taxing jurisdiction over the Fort Mojave Tribe.

> "[W]e cannot say that [28 U.S.C. 1360] directly authorizes [this] taxation. *Bryan v. Itasca County, supra*, forecloses the possibility of such a statement by specifically holding that the [28 U.S.C. 1360] grant of civil jurisdiction only confers jurisdiction over civil causes of action involving Indians. It is not a general grant of regulatory and taxing power over Indians." 543 F.2d at 1257.

The court upheld the tax, finding that, unlike the situation in *Bryan*, there was State action directed at non-Indians and that no Indian or Indian land was being subjected to direct State court process.

Appellants also rely on *Rincon Band of Mission Indians v. County of San Diego*, 324 F.Supp. 371 (S.D. Calif. 1971) as authority for their contention that tribal sovereign immunity must yield to state law. [Petition for Writ, p. 16] *Rincon* is distinguishable from the facts at hand, for in *Rincon* the court upheld the enforcement of a county gambling ordinance on an Indian reservation as an exercise of the state's police power to regulate this conduct to promote the general welfare and to protect the health and well being of its citizens. No such criminal ordinance or exercise of police power is involved here.

risdiction on State courts only in instances involving private litigation. Because this Court specifically referred to private litigation as that involving reservation Indians or Indians and other private citizens, *Bryan* impliedly holds that litigation which a *tribe*, rather than a private individual, is a party, is not such private civil litigation as set forth in Section 1360.

This "private litigation" question was specifically addressed by the Supreme Court of Alaska in *Atkinson v. Haldane*, 569 P.2d 151 (Alaska 1977), involving an action for wrongful death arising out of an automobile accident which occurred on an Indian reservation. The complaint charged that certain tribal police officers negligently operated their vehicle, proximately causing the accident. It named as defendants the Metlakatla Tribe, certain officials of the Tribe, and four police officers. The court held that the *tribe* was immune from suit.

> "Once the executive branch has determined that the Metlakatla Indian Community is an Indian tribe, which is a nonjusticiable political question, the Community is entitled to all of the benefits of tribal status . . . [O]ne of those benefits is tribal sovereign immunity in the absence of congressional waiver." 569 P.2d at 163.

Once it determined that the Tribe had sovereign immunity, the Supreme Court of Alaska went on to analyze whether that immunity had been waived by 28 U.S.C. 1360. The Supreme Court of Alaska recognized that while a State taxing function did not constitute private litigation, a wrongful death action against a Tribe might be such private litigation.

Recognizing that the statute (28 U.S.C. 1360) was not clear in this regard,[10] the court analyzed whether a waiver could be implied:

> "Our study of the question has convinced us that 28 U.S.C. § 1360(a) is ambiguous and that the legislative history offers little guidance in resolving that ambiguity. Of controlling significance is the absence of any clear waiver of sovereign immunity in the statutes. Since tribal sovereign immunity is a long-recognized principle founded on strong public policy, we conclude that without an express Congressional waiver of immunity, we should not imply one. We therefore hold that Congress, by virtue of its enactment of 28 U.S.C. Section 1360(a), did not waive the sovereign immunity of the Indian tribes, and thus the Metlakatla Indian community has sovereign immunity with respect to the subject wrongful death action." 569 P.2d at 167. (Footnote deleted).

This same result was reached in *Parker Drilling Co. v. Metlakatla Indian Community*, 451 F.Supp. 1127 (D.Alaska 1978), involving a claim for property damage to an aircraft

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[10]The Alaska Supreme Court held that the sovereignty of the tribe was waived "only if it is clear from the unambiguous language of 28 U.S.C. 1360(a) and its legislative history that Congress intended such a waiver." *Atkinson v. Haldane, supra*, 569 P.2d 151, 167. The Court noted in its analysis that any ambiguities were to be resolved in favor of the Indians. *See*, generally *Bryan v. Itasca County, Minnesota, supra*, 426 U.S. 373, 392 [". . . doubtful expressions (are to be) resolved in favor of the Indians."], *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655, 660 (9th Cir. 1975) [". . . ambiguities in federal treaties or statutes dealing with Indians must be resolved favorably to the Indians."], and *People v. Rhoades*, 12 Cal.App.2d 720, 723, 90 Cal.Rptr. 794 (1970) [". . . all federal Indian laws must be construed in the manner more favorable to Indians . . ."].

allegedly caused by the negligence of the Indian community.[11]

There is no waiver of the sovereign immunity of the Chemehuevi Indian Tribe in either 25 U.S.C. 1302 or 28 U.S.C. 1360. And the decision of the Chemehuevi Indian Tribe to do business in the tribal form does not constitute a waiver of its immunity.

The Supremacy Clause of the U.S. Constitution required California to recognize the sovereign immunity of the Chemehuevi Indian Tribe. Since under Federal law the Tribe is immune from suit in the State courts, the petition for writ of certiorari should be denied.

III.

Recognition of the Sovereign Immunity of the Chemehuevi Indian Tribe Is Not a Denial of Equal Protection Because It Is a Political, Not a Racial, Preference.

Appellants argue that application of the doctrine of sovereign immunity to the Indian tribes is an arbitrary classi-

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[11]Appellants cite *Parker* in support of their contention that the state courts do have jurisdiction over the Chemehuevi Indian Tribe. [Petition for Writ, p. 21]. However, Parker is distinguished from this case in that in *Parker*, the plaintiff alleged in its complaint that the airport was owned by the Metlakatla Indian Community in its capacity as an Indian corporation organized pursuant to § 17 of the Indian Reorganization Act, 25 U.S.C. 477 *et seq*. Insofar as the Indian community was doing business in the tribal form, it was immune; however insofar as it was doing business in the corporate form, it had waived its sovereign immunity in its corporate charter and therefore would be subject to suit.

> "The Metlakatla Indian Community Corporation could have restricted the extent of its sue and be sued clause [in its corporate charter] to prohibit tort liability. It chose not to do so and the Secretary of the Interior was empowered [by Congress] to approve such a general waiver of sovereign immunity to carry out the intent of §17." 451 F.Supp. at 1137.

Thus, Appellants' contention that the "mere fact that the tribe in *Parker* had incorporated the business should not make any difference" (Petition for Writ, p. 21) is clearly erroneous.

fication based on race.[12] Reflecting the unique political history of the Indian tribes, this Court has clearly held that any preference of the Chemehuevi Indian Tribe under the law is political and not racial.

In *Morton v. Mancari*, 417 U.S. 535 (1974), this Court rejected a constitutional attack on this same basis on the federal program for employment preferences for qualified Native Americans in the Bureau of Indian Affairs. Justice Blackmun, writing for a unanimous court, stated that this "longstanding Indian preference" was not a "racial" preference, but rather

> "an employment criterion reasonably designed to further the cause of Indian self-government and to make the B[ureau of] I[ndian] A[ffairs] more responsive to the needs of its constituent groups." 417 U.S. at 554.

Since the preference only applied to Indians who were members of "federally recognized" tribes, he added, "the preference is political rather than racial in nature." Justice Blackmun found the preference was reasonable and directly related to a legitimate, non-racially based goal, "which is a characteristic generally absent from proscribed forms of racial discrimination." This Court concluded:

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[12]This immunity of the tribe applies to suits by tribal members as well as non-members. See, for example, *Iron Crow v. Oglala Sioux Tribe of Pine Ridge Reservation*, 231 F.2d 89 (8th Cir. 1956), where tribal members sued the tribe to enjoin enforcement by the tribe of sentences for adultery pursuant to convictions in the tribal court and to enjoin the tribe from assessment and collection of a tax for the privilege of grazing stock on land in the reservation which was owned by a member of the tribe but leased for grazing purposes to non-members of the tribe. The trial court dismissed the action on the grounds that the tribe was a sovereign, independent nation and therefore not subject to suit. The plaintiffs appealed. On appeal the court affirmed, concluding that the tribe was immune from suit. The court stated:

> "We hold that Indian tribes, such as the defendant Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota, still possess their inherent sovereignty excepting only where it has been specifically taken from them, either by treaty or by Congressional Act." 231 F.2d at 94.

> "As long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians, such legislative judgments will not be disturbed." 417 U.S. at 555.

This Court in *Morton* noted that the preference was granted to Indians as members of quasi-sovereign tribes rather than to Indians as a racial group:[13]

> "The preference, as applied, is granted to Indians not as a discrete racial group, but, rather, as members of quasi-sovereign tribal entities whose lives and activities are governed by the BIA in a unique fashion." 417 U.S. at 554.

Appellants also argue that recognition of the sovereign immunity of the Chemehuevi Indian Tribe is a violation of the equal protection clause of the Constitution of the State of California. Since the Constitution of the United States

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[13]The Court noted in *Morton* that it had on numerous occasions specifically upheld legislation that singled out Indians for particular and special treatment. *See*, for example, *Board of County Commissioners v. Seber*, 318 U.S. 705 (1943) [federally granted tax immunity]; *Simmons v. Eagle Seelatsee*, 384 U.S. 209 (1966) [statutory definition of tribal membership, with resulting interest in trust estate]; *Williams v. Lee*, 358 U.S. 217 (1959) [tribal courts and their jurisdiction over reservation affairs].

See also *United States v. Antelope*, 430 U.S. 641 (1977) which reaffirmed the *Morton* holding:

> "The decisions of this Court leave no doubt that federal legislation with respect to Indian tribes, although relating to Indians as such, is not based upon impermissible racial classifications. Quite the contrary, classifications expressly singling out Indian tribes as subjects of legislation are expressly provided for in the Constitution [citing Art. 1, sec. 8 re Congress' power to regulate commerce with the Indian tribes] and supported by the ensuing history of the Federal Government's regulations with Indians . . . Federal regulation of Indian tribes . . . is governance of once-sovereign political communities; it is not to be viewed as legislation of a ' "racial" group consisting of "Indians" . . .' " 430 U.S. at 645-646.

recognizes the sovereignty of the Indian tribes, it is controlling under the Supremacy Clause.

The recognition of the sovereign immunity of the Tribe does not violate equal protection principles.[14]

Conclusion.

Indian tribes possess sovereign immunity and in the absence of a waiver the courts of the State of California have no jurisdiction over the Chemehuevi Indian Tribe. The Tribe did not waive its immunity, and recognition of the sovereign immunity of the Tribe does not violate equal protection guarantees. Thus, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

BERG & PHELPS,
By RUTH A. PHELPS,
Attorneys for Defendant-Respondent, Chemehuevi Indian Tribe.

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[14]The fact that the Indian members of the Chemehuevi Indian Tribe are citizens of the United States or citizens of the State of California does not abrogate the doctrine of sovereign immunity. See, generally, *United States v. Nice*, 241 U.S. 591, 598 (1916) regarding U.S. citizenship; *Winton v. Amos*, 255 U.S. 373 (1921) regarding state citizenship.